

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 699 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No :

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BAI CHAMPA WD/O AMBALAL

Versus

PRAMODCHANDRA R MODY

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Appearance:

MR RN SHAH for Petitioners

MR MJ THAKORE for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. This is plaintiffs' Appeal against the Judgment and Decree dated 20.3.1979 of City Civil Judge, Ahmedabad, dismissing the Suit of the plaintiffs - Appellants.

2. Brief facts are that a Suit for permanent injunction was filed by the plaintiffs against the defendants - respondents alleging that the disputed land was their exclusive property and the defendants raised unauthorised construction which are liable to be demolished. Further, they are to be restrained from raising further construction over the land belonging to the plaintiffs.

3. The Suit was resisted on following grounds taking the plea of estoppel and acquiesces and also pleading that the plaintiffs are not the sole owners of the disputed land rather the defendants are the owners of the disputed land. They also pleaded that the Suit for injunction only is not maintainable. They also denied that they have raised unauthorised construction by putting up the latrine and chokadi upon the suit land. They are also in possession of the suit land since more than twelve years and that they have become owners of the suit land by adverse possession and in the alternative, according to them, the latrine and chokdi were constructed in the year 1964 openly within the knowledge of the plaintiff and since the plaintiffs never objected to the construction of chokdi and latrine they are estopped from claiming demolition or injunction with respect to the land in Suit.

4. The trial Court held that the parties are joint owners of the property in Suit. It repelled the contention of the plaintiff that they are sole owners of the property. It also refused to consider the defendants' plea that they are owners of the property. Finding that the land in dispute was joint property of the parties the trial Court observed that the parties have right to use joint property and the defendants have right to put up drainage pipe so long the discharge of drain water does not obstruct plaintiffs' enjoyment of the Suit land. With these findings the Suit was dismissed.

5. Shri R.N.Shah, learned Counsel for the appellants has been heard and the Judgment under Appeal has been examined.

6. Shri R.N.Shah points out that in Civil Application No.1404 of 1979 this Court passed an order directing the parties to maintain status-quo and that order still continues. He however informs that after dismissal of the Suit on legal advise another Suit was filed by the plaintiffs vide Civil Suit No.411 of 1980

claiming relief that they being joint owners of the property in dispute they have right to construct latrine and chokdi thereon. The said Suit was decreed by the City Civil Court No.7 on 11.10.1984. The operative portion of the order in Civil Suit No.411 of 1980 runs as under :

"The Suit is decreed. It is hereby declared that the plaintiffs are entitled to claim permanent injunction restraining the defendants from obstructing the plaintiffs in causing to construct one water closet on the suit land in such manner as would not obstruct enjoyment thereof by the other co-owners or persons claiming through such other co-owners subject to any further order that may be passed in Civil Application No.1404 of 1979 or decision in First Appeal No.699 of 1979 (emphasis supplied. The order of injunction may be issued only after disposal of First Appeal No.699 of 1979 by the Hon'ble High Court of Gujarat."

After this Decree the appellants moved another Civil Application No.2398 of 1984 intimating about the decision of the subsequent Suit and praying for modification of the order passed in Civil Application No.1404 of 1979 on 8.5.1979. That Application is also pending.

7. Shri R.N. Shah has argued that in view of the Judgment and Decree in Civil Suit No.411 of 1980 for all purposes this Appeal has become infructuous. He further argues that the Appeal may be dismissed as infructuous and the Civil Application No.1404 of 1979 and Civil Application No.2390 of 1984 may be decided vacating the order granting status-quo in favour of the parties so that the judgment and Decree dated 11.10.1984 in Civil Suit No.411 of 1980 may operate.

8. In view of above discussion and contentions of Shri R.N.Shah, First Appeal No.699 of 1979 is dismissed having become infructuous with no order as to costs. Civil Application No.2390 of 1984 is allowed and the interim order directing the parties to maintain status-quo in Civil Application No.1404 of 1979 is hereby discharged.

sd/-

Date : 06.04.2000 (D. C. Srivastava, J.)

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